

1 MICHAEL C. ORMSBY
United States Attorney
Eastern District of Washington
2 ALEXANDER C. EKSTROM
Assistant United States Attorney
3 402 E. Yakima Avenue, Suite 210
Yakima, Washington 98901
4 (509) 454-4425

5
6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 KENNETH ROWELL,

12 Defendant.
13
14

No: CR-13-6070-WFN
AMENDED
GOVERNMENTS RESPONSE TO
DEFENDANT'S MOTION TO
RECONSIDER CONDITIONS OF
RELEASE

15
16 Plaintiff, United States of America, by and through Michael C. Ormsby, United
17 States Attorney for the Eastern District of Washington, and Alexander C. Ekstrom,
18 Assistant United States Attorney for the Eastern District of Washington, responds to
19 the Defendant's Request To Reconsider Detection (ECF No. 25), as follows:

20 **I. PROCEDURAL HISTORY**

21 On December 2, 2013, a Criminal Complaint was filed, charging the Defendant
22 with a violation of 21 U.S.C. section 841(a)(1), Possession With Intent to Distribute A
23 Controlled Substance, Methamphetamine. (ECF No. 1). The same day, a warrant
24 issued. (ECF No. 2). The Defendant was arrested, and had his initial appearance on
25 December 4, 2013. (ECF No. 3). The Government filed a Motion for Detention, and
26 the bail hearing was scheduled for December 9, 2013. (ECF Nos. 4, 10). At the
27 Detention Hearing on December 9, 2013, in front of Magistrate Judge John T.
28 Rodgers, after argument of counsel, the Defendant was ordered detained. (ECF No.

14). At that hearing, the Defendant argued that he should be released to his parents, and indicated that he could work for his father's construction company. Magistrate Judge Rodgers commented that he did not believe that there were any conditions that would reasonably assure the Defendant's appearance, and the safety of the community. In particular, Magistrate Rodgers pointed out that the Defendant's proposal for release at the time of that hearing, to his parents, would be the same conditions under which has committed crimes and is accused of committing a recent series of crimes¹. Magistrate Rodgers has thus previously found the Defendant's proposed release address unacceptable.

II. ARGUMENT

A Defendant may move to reopen a detention hearing based on information "that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." 18 U.S.C. section 3142(f)(2)(B). That said, it is clear that the magistrate was advised of the proposed residence (ECF No. 13, page 2), and found it insufficient, in light of the Defendant's past history. In addition, the Government believes that the possibility of employment with his father was also proffered at the original hearing. As such, there is no new information to require a hearing under the statute.

In addition, the Government is advised, this morning, that the certified copies of the Defendant's many prior drug convictions have arrived at the Metro Drug Task Force. Upon confirmation of the certified copy of Judgment and Sentence in Benton

¹ The Defendant is a sex offender subject to registration, and has consistently provided his parent's address to local authorities. The Defendant has lived in Pasco, WA, by self-report, for his entire life, with the exception of one year in 2002. (ECF No. 13).

1 County Superior Court Cause Number 09-1-00550-1, the Government will be filing
2 its notice of prior conviction under 18 U.S.C. section 851, which will result in a
3 mandatory minimum term of 10 years in prison, which will trigger the rebuttal
4 presumption under 18 U.S.C. section 3142(e)(3).

5 **III. CONCLUSION**

6 Because the Defendant's information is not materially different from that
7 previously presented, and because by the time of the requested hearing, the Defendant
8 will be subject to the rebuttal presumption, the Defendant's motion should be denied.
9

10 DATED this 16th day of December, 2013.
11

12 MICHAEL C. ORMSBY
13 United States Attorney

14 s/ Alexander C. Ekstrom
15 ALEXANDER C. EKSTROM
16 Assistant United States Attorney
17
18
19
20
21
22
23
24
25
26
27
28

1 I hereby certify that on December 16, 2013, I electronically filed the foregoing
2 with the Clerk of the Court using the CM/ECF System which will send notification of
3 such filing to the following: Rick L. Hoffman

4
5 s/ Alexander C. Ekstrom
6 Alexander C. Ekstrom
7 Assistant United States Attorney
8 United States Attorney's Office
9 402 E. Yakima Ave., Suite 210
10 Yakima, WA 98901
11 (509) 454-4425
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28